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**Eagle Window & Door, Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO. Case 33-CA-11441**

April 11, 1996

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

Upon a charge filed on January 8, 1996, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on February 13, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain and to furnish the Union with necessary and relevant information following the Union's certification in Case 33-RC-3911. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On March 4, 1996, the General Counsel filed a Motion for Summary Judgment. On March 6, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 20, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer and response the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its objections to the election and the Board's disposition of certain challenged ballots in the representation proceeding. In addition, the Respondent in its answer denies that the requested information is necessary and relevant to the Union's role as the exclusive bargaining representative.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable

in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that the Respondent has not raised any factual issues requiring a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

1. A current list of all employees in the bargaining unit along with their last date of hire, the classification, and paid wage rate.

2. A current list of all established classifications and pertinent job titles along with the job classifications and job evaluations. The wage rate ranges in the various classifications and pertinent job titles. Also, a full description of the Company's method of evaluating an employee or his work in establishing if he is to receive—and when he is to receive—any rate range wage increase.

3. A copy of [the Company's] existing 401K and/or Pension Plan, including a copy of the 401K and/or Pension Plan Trust Agreement, plans and procedures used by the Trustees, which are not described in the 401K and/or Pension Trust Agreement and any pertinent decisions made by the Trustees. Also, the amount of any employee contributions to the 401K and/or Pension and the amount paid by the Company in behalf of each employee.

4. A copy of contracts for Hospitalization & Surgery Insurance, Accident and Sickness Insurance, Dental Insurance, Life Insurance, and Major Medical covering the employees and their dependents under each plan, in behalf of the employee, or his dependents. Also, the Company-paid cost of each plan and the amount contributed by each employee.

5. Detailed information regarding the Company's policies and practices including pay, if any, in the instances as follows:

- (a) Vacations
- (b) Holidays
- (c) Overtime payments and distribution
- (d) Call-in pay
- (e) Reporting pay
- (f) Leave of absences
- (g) Bereavement pay
- (h) Rest periods & wash-up time
- (I) Absence allowance
- (j) Jury duty
- (k) Lunch periods, breaks, and when paid
- (l) Employee's preference of shifts
- (m) Shift premiums
- (n) Shift schedules and how changes, how much notice
- (o) Increase in cost of living, how and when paid
- (p) Merit system.

6. A copy of all existing rules and regulations affecting the employees in the bargaining unit.

7. The last known address and telephone number of all current bargaining unit employees, also the age, sex and marital status of each bargaining unit employee.

Although the Respondent in its answer denies that the foregoing information is necessary and relevant, it is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Cross Pointe Paper Corp.*, 317 NLRB 558 (1995); *Tire America*, 315 NLRB 197 (1994); *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994), and *Holiday Inn Coliseum*, 303 NLRB 367 (1991).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times the Respondent, an Iowa corporation with an office and place of business in Dubuque, Iowa, has been engaged in the business of manufacturing windows and doors at its Dubuque, Iowa facility.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000 and purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Iowa.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. The Certification

Following the election held June 24, 1994, the Union was certified on September 26, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:<sup>1</sup>

All full-time and regular part-time production and maintenance employees including truck drivers, field service representatives, and regular seasonal employees employed by the Employer at its facility in Dubuque, Iowa, but excluding office clerical employees, professional employees, manage-

rial employees, guards and supervisors as defined in the Act.<sup>2</sup>

The Union continues to be the exclusive representative under Section 9(a) of the Act.

###### B. Refusal to Bargain

About October 17, 1995, and on various dates thereafter, the Union requested the Respondent to furnish information that is relevant and necessary to the Union's role as the exclusive bargaining representative, and since about the same date, the Respondent has refused to furnish the requested information or to recognize and bargain with the Union. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after October 17, 1995, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Eagle Window & Door, Inc., Dubuque, Iowa, its officers, agents, successors, and assigns, shall

<sup>1</sup> Although the Respondent's answer denies the appropriateness of the unit, the Respondent effectively agreed to the appropriateness of the unit by entering into a Stipulated Election Agreement in the representation proceeding. Accordingly, we find that the Respondent's denial in this regard does not raise any issue warranting a hearing. See, e.g., *Wintz Distribution Co.*, 317 NLRB 284 fn.1 (1995).

<sup>2</sup> Although the Board adopted the hearing officer's finding in the underlying representation proceeding that the Respondent's group leaders as a single classification are Sec. 2(11) supervisors, the Board's certification of representative inadvertently included group leaders in the bargaining unit. We have corrected the unit description accordingly.

1. Cease and desist from

(a) Refusing to bargain with the International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees including truck drivers, field service representatives, and regular seasonal employees employed by the Employer at its facility in Dubuque, Iowa, but excluding office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information it has requested since October 17, 1995.

(c) Post at its facility in Dubuque, Iowa, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Re-

spondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 11, 1996

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William B. Gould IV, Chairman

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Margaret A. Browning, Member

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Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

<sup>3</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All full-time and regular part-time production and maintenance employees including truck drivers, field service representatives, and regular seasonal employees employed by us at our facility in Dubuque, Iowa, but excluding office clerical employ-

ees, professional employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL provide the Union with the information it has requested since October 17, 1995.

EAGLE WINDOW & DOOR, INC.